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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,784	08/15/2003	Carmen T. Reitano	VPL-003	1783
26918	7590	06/28/2004	EXAMINER	
WHITE & FUDALA 57 BEDFORD STREET SUITE 103 LEXINGTON, MA 02420			HAMILTON, ISAAC N	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/604,784	<b>Applicant(s)</b> REITANO, CARMEN T.	
	<b>Examiner</b> Isaac N Hamilton	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/15/03</u> . | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-7, drawn to a quartering pill splitter, classified in class 225, subclass 103.
  - II. Claims 8-14, drawn to a method for splitting a pill in quarters, classified in class 225, subclass 001.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, another materially different apparatus can practice the process as claimed, such as, a thin, cruciate blade assembly that is adjustable in proximity to the bed instead of “affixed” as claimed in claim 1, line 5.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with applicant’s representative, Mr. Mark P. White, on June 16, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Specification***

5. The disclosure is objected to because of the following informalities: the brackets should be removed from the title “[Quartering Pill Splitter]”.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 is dependent from a succeeding claim, which is improper, and renders the claim unexamined.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Samuelson (5,634,272). Samuelson discloses bed 26; recess 26C; cross section shown in figure 2; blade 40; upper compression member 16; means to forceably engage 10C.

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10. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Berry et al (2,852,053), hereafter Berry. Berry discloses bed 10 where element 10 is juxtaposed between the top of recess 7 of plunger 6 and the view line for figure 4 in figure 2; recess is the empty space inside the outer shell of bed 10; cross section is show in figure 4; cutting blade 20; blades 20 are cruciate because every other blade 20 of the assembly is at a 90 degree angle, therefore, four alternating blades comprise a cruciate shape; upper compression member is the surface juxtaposed to recess 7 on plunger 6; means to forceably engage attached to the plunger 6 in the form of a handle as shown in figure 2.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Samuelson in view of Umanoff (3,048,208). Samuelson discloses everything as noted above, but does not disclose a second blade offset from a first blade. However, Umanoff teaches second blade 14 offset from first blade 15. It would have been obvious to provide a second blade offset from a first blade in Samuelson as taught by Umanoff in order to cut an object without crushing it. Note column 1, lines 45-50 in Umanoff.

13. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berry in view of Umanoff. Berry discloses everything, but does not disclose a second blade offset from a first

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blade. However, Umanoff teaches second blade 14 offset from first blade 15. It would have been obvious to provide a second blade offset from a first blade in Berry as taught by Umanoff in order to cut an object without crushing it. Note column 1, lines 45-50 in Umanoff. Regarding claims 4 and 5, note in Berry plunger 6; lower body 15; upper body 10 where element 10 is juxtaposed between the top of blades 20 and the view line for figure 4 in figure 2; guide slot 12; plunger guide 11; bed is cylindrical because it comprises cylindrical element 10.

Berry discloses the claimed invention except for multiple guide slots and multiple plunger guides. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide multiple guide slots and multiple plunger guides, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. It would have been obvious to provide multiple guide slots and multiple plunger guides in order to further stabilize the plunger in the cylinder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac Hamilton whose telephone number is 703-305-4949. The examiner can normally be reached on Monday thru Friday between 8am and 5pm. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-1148.

IH

June 22, 2004



KENNETH E. PETERSON  
PRIMARY EXAMINER